

AMENDED IN SENATE JUNE 24, 2009

AMENDED IN ASSEMBLY MAY 4, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## ASSEMBLY BILL

No. 1343

---

**Introduced by Assembly Member Huffman**  
**(~~Coauthor: Assembly Member Torlakson~~ *Coauthors: Assembly***  
***Members Ma and Torlakson*)**

February 27, 2009

---

An act to add and repeal Chapter 5 (commencing with Section 48700) of Part 7 of Division 30 of the Public Resources Code, relating to solid waste.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1343, as amended, Huffman. Solid waste: architectural ~~paint~~. *paint: recovery program.*

Existing law prohibits the disposal of latex paint in the land or waters of the state and authorizes certain persons to accept latex paint for recycling.

~~This bill would create the architectural paint recovery program and would require architectural paint manufacturers to develop and implement strategies to reduce the generation of postconsumer paint, promote the reuse of postconsumer paint, and manage the end-of-life of postconsumer paint through collecting, transporting, and processing. The manufacturers would be allowed to establish a cost recovery system to collect a fee from the consumer on all architectural paint sold in this state sufficient to recover the costs of the end-of-life management of postconsumer paint in an environmentally sound fashion.~~

~~The bill would require manufacturers to submit a report to the California Integrated Waste Management Board by July 1, 2011, and each year thereafter, describing their paint recovery efforts. On or before January 1, 2012, the board would be required to submit a report to the Legislature describing the results of the architectural paint recovery program, including certain recommendations and financial analysis.~~

~~This bill would make the program inoperable on July 1, 2013, and would repeal these provisions on January 1, 2014.~~

*The California Integrated Waste Management Act of 1989, administered by the California Integrated Waste Management Board, is required to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an efficient cost-effective manner to conserve water, energy, and other natural resources.*

*This bill would create an architectural paint recovery program that would be enforced by the board. On or before January 1, 2011, a manufacturer or designated stewardship organization would be required to submit to the board an architectural paint stewardship plan to develop and implement a recovery program to reduce the generation of postconsumer paint, promote the reuse of postconsumer architectural paint, and manage the end-of-life of postconsumer architectural paint, in an environmentally sound fashion, including collection, transportation, processing, and disposal. The plan would be required to contain specified elements of an architectural paint stewardship program, including, but not limited to, an architectural paint stewardship assessment, approved by the board, on each container of architectural paint sold in this state. The bill would require the plan to be reviewed and approved by the board, and if the board does not act on the plan within 90 days of receipt, it would be deemed adopted.*

*This bill would require, on or before July 1, 2011, or two months after a plan is approved by the board, the manufacturer or stewardship organization to implement the architectural paint stewardship program described in the approved plan.*

*The bill would also prohibit a manufacturer or retailer from selling or offering for sale architectural paint to any person in this state, unless the manufacturer is in compliance with this act. The prohibition would be in effect on the 120th day after a notice listing the manufacturer as not being in compliance is posted on the board's Internet Web site.*

*This bill would authorize the board to administratively impose civil penalties for violations of the act. The bill would require manufacturers*

to submit a report to the board by July 1, 2012, and each year thereafter, describing their paint recovery efforts.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. The Legislature finds and declares all of the*  
2     *following:*

3     *(a) Architectural paint is a priority waste type based on its high*  
4     *volume, subsequent cost to manage, and high potential for*  
5     *increased recovery, reuse, and recycling.*

6     *(b) The Department of Toxic Substances Control has deemed*  
7     *latex paint as presumed hazardous in California and oil-based*  
8     *paint is characteristically hazardous, making both latex and*  
9     *oil-based paints prohibited from disposal in California.*

10    *(c) The California Integrated Management Waste Board*  
11    *estimates that architectural paint, both latex and oil-based,*  
12    *comprises the largest volume of waste product collected at publicly*  
13    *operated household hazardous waste facilities, 35 percent of total*  
14    *household hazardous waste collected in California in the 2007–08*  
15    *fiscal year.*

16    *(d) The Department of Toxic Substances Control estimates that*  
17    *the cost to manage waste architectural paint in California is the*  
18    *single largest cost to local governments in the household hazardous*  
19    *waste system.*

20    *(e) The board estimates that for the 2007–08 fiscal year only 5*  
21    *percent of California households utilized a household hazardous*  
22    *waste program.*

23    *(f) Architectural paint is convenient to buy and inconvenient to*  
24    *recycle or legally dispose of in California.*

25    *(g) There has been an ongoing debate on how to better manage*  
26    *leftover architectural paint since 1989 when the board heard an*  
27    *item on options to fund a collection and management system.*

28    *(h) A national dialogue has been ongoing since 2002, yet has*  
29    *not resulted in any architectural paint collection or financial relief*  
30    *to California local governments.*

31    *(i) California has the largest number of latex paint recyclers in*  
32    *the country: Amazon Environmental (Riverside), Kelly-Moore*  
33    *(Sacramento), and Visions (Sacramento).*

(j) *State procurement of recycled paint is required. The state agency “buy recycled” mandates are not being met, and there is no enforcement mechanism, resulting in only 2 percent compliance reporting to the board.*

(k) *The board adopted an Overall Framework for an Extended Producer Responsibility (EPR) guidance document as a policy priority in January 2008.*

(l) *The EPR framework recognizes that the responsibility for the end-of-life management of discarded products and materials rests primarily with the producers, thereby incorporating costs of product collection, recycling, and disposal into the total product costs so as to have a reduced impact on human health and the environment.*

#### SECTION 1.

SEC. 2. Chapter 5 (commencing with Section 48700) is added to Part 7 of Division 30 of the Public Resources Code, to read:

#### CHAPTER 5. ARCHITECTURAL PAINT RECOVERY PROGRAM

48700. The purpose of the architectural paint recovery program established pursuant to this chapter is to require paint manufacturers to develop and implement a program to collect, transport, and process postconsumer paint to reduce the costs and environmental impacts of the disposal of postconsumer paint in this state.

~~48701. For the purposes of this chapter the following terms have the following meanings:~~

~~(a) “Board” means the California Integrated Waste Management Board.~~

~~(b) “Manufacturer” means a manufacturer of architectural paint.~~

~~(c) “Paint” means interior or exterior architectural coatings, including paints and stains purchased for commercial or homeowner use, but does not include architectural coatings purchased for industrial or original equipment manufacturer use.~~

~~48702. (a) A manufacturer of paint sold in this state shall, individually or through a representative organization, implement a recovery program to develop and implement strategies to reduce the generation of postconsumer paint, promote the reuse of postconsumer paint, and manage the end-of-life of postconsumer paint, through collecting, transporting, and processing.~~

1 ~~(b) A cost recovery system may be established by the~~  
2 ~~manufacturer, individually or through a representative organization,~~  
3 ~~to collect a fee from the consumer on all architectural paint sold~~  
4 ~~in this state sufficient to recover the costs of the end-of-life~~  
5 ~~management of postconsumer paint in an environmentally sound~~  
6 ~~fashion, including collection, storage, transportation, reuse, and~~  
7 ~~disposal.~~

8 ~~48703. By July 1, 2011, and each year thereafter, a~~  
9 ~~manufacturer of paint sold in this state shall, individually or~~  
10 ~~through a representative organization, submit a report to the board~~  
11 ~~describing its paint recovery efforts. At a minimum, the reports~~  
12 ~~shall include all of the following:~~

13 ~~(a) The total volume of paint sold in this state during the~~  
14 ~~preceding calendar year.~~

15 ~~(b) The total volume of postconsumer paint recovered in this~~  
16 ~~state during the preceding calendar year.~~

17 ~~(c) A description of methods used to collect, transport, and~~  
18 ~~process postconsumer paint in this state.~~

19 ~~(d) The total cost of implementing the program.~~

20 ~~(e) An evaluation of how the program's funding mechanism~~  
21 ~~operated.~~

22 ~~(f) Examples of educational materials that were provided to~~  
23 ~~consumers.~~

24 ~~(g) An analysis of the environmental costs and benefits of~~  
25 ~~collecting and recycling latex paint.~~

26 ~~(h) An evaluation of the feasibility of donating usable~~  
27 ~~postconsumer paint to charitable organizations, nonprofit~~  
28 ~~organizations, and kindergarten and grades 1 to 12, inclusive,~~  
29 ~~schools.~~

30 ~~48704. On or before January 1, 2012, the board shall submit~~  
31 ~~a report to the Legislature describing the results of the architectural~~  
32 ~~paint recovery program and recommending whether it should be~~  
33 ~~extended and any modifications needed to improve the functioning~~  
34 ~~and efficiency of the program. The report shall include an analysis~~  
35 ~~of the costs avoided by state and local government agencies as a~~  
36 ~~result of the program.~~

37 ~~48705. Any action taken by a manufacturer or representative~~  
38 ~~organization regarding the cost recovery system or the collecting,~~  
39 ~~transporting, or processing of postconsumer paint, pursuant to the~~  
40 ~~requirements of this chapter and only to the extent necessary to~~

1 plan and implement the cost recovery system, collection system,  
2 or recycling system, is not a violation of the Cartwright Act  
3 (Chapter 2 (commencing with Section 16700) of Part 2 of Division  
4 7 of the Business and Professions Code), the Unfair Practices Act  
5 (Chapter 4 (commencing with Section 17000) of Part 2 of Division  
6 7 of the Business and Professions Code), or any other state law  
7 relating to antitrust, regulation of trade, or regulation of commerce.

8 48706. This chapter shall become inoperative on July 1, 2013,  
9 and, as of January 1, 2014, is repealed, unless a later enacted  
10 statute, that becomes operative on or before January 1, 2014,  
11 deletes or extends the dates on which it becomes inoperative and  
12 is repealed.

13 48701. For purposes of this chapter, the following terms have  
14 the following meanings:

15 (a) "Architectural paint" means interior and exterior  
16 architectural coatings, sold in containers of five gallons or less  
17 for commercial or homeowner use, but does not include  
18 architectural coatings purchased for industrial or original  
19 equipment manufacturer use.

20 (b) "Board" means the California Integrated Waste  
21 Management Board.

22 (c) "Consumer" means a purchaser or owner of architectural  
23 paint, including a person, business, corporation, limited  
24 partnership, nonprofit organization, or governmental entity.

25 (d) "Distributor" means a person that has a contractual  
26 relationship with one or more manufacturers to market and sell  
27 architectural paint to retailers.

28 (e) "Manufacturer" means a manufacturer of architectural  
29 paint.

30 (f) "Postconsumer paint" means architectural paint not used  
31 by the purchaser.

32 (g) "Retailer" means a person that sells architectural paint in  
33 the state to a consumer. A sale includes, but is not limited to,  
34 transactions conducted through sales outlets, catalogs, or the  
35 Internet or any other similar electronic means.

36 (h) "Stewardship organization" means the nonprofit  
37 organization created by the manufacturers to implement the  
38 architectural paint stewardship program described in Section  
39 48703.

1     48702. (a) A manufacturer of architectural paint sold in this  
2 state shall, individually or through a stewardship organization,  
3 submit an architectural paint stewardship plan to the board to  
4 develop and implement a recovery program to reduce the  
5 generation of postconsumer architectural paint, promote the reuse  
6 of postconsumer architectural paint, and manage the end-of-life  
7 of postconsumer architectural paint, in an environmentally sound  
8 fashion, including collection, transportation, processing, and  
9 disposal.

10    (b) (1) A manufacturer or retailer shall not sell or offer for sale  
11 in this state architectural paint to any person in this state unless  
12 the manufacturer is in compliance with this chapter.

13    (2) The sales prohibition in paragraph (1) shall be effective on  
14 the 120th day after the notice described in subdivision (c) lists the  
15 manufacturer on the board's Internet Web site and shall remain  
16 in effect until the manufacturer is no longer listed on the board's  
17 Internet Web site.

18    (c) On July 1, 2011, and on January 1 and July 1 annually  
19 thereafter, the board shall post a notice on its Internet Web site  
20 listing manufacturers that are not in compliance with this chapter.

21    (d) A wholesaler or a retailer that distributes or sells  
22 architectural paint shall monitor the board's Internet Web site to  
23 determine if the sale of a manufacturer's architectural paint is in  
24 compliance with this chapter.

25     48703. (a) On or before January 1, 2011, a manufacturer or  
26 designated stewardship organization shall submit an architectural  
27 paint stewardship plan to the board.

28    (b) (1) The plan shall demonstrate sufficient funding for the  
29 architectural paint stewardship program as described in the plan,  
30 including a funding mechanism for securing and dispersing funds  
31 to cover administrative, operational, and capital costs, including  
32 the assessment of charges on architectural paint sold by  
33 manufacturers in this state.

34    (2) The funding mechanism shall provide for an architectural  
35 paint stewardship assessment for each container of architectural  
36 paint sold by manufacturers in this state and the assessment shall  
37 be remitted to the stewardship organization, if applicable.

38    (3) The architectural paint stewardship assessment shall be  
39 added to the cost of all architectural paint sold to California  
40 retailers and distributors, and each California retailer or

1 distributor shall add the assessment to the purchase price of all  
2 architectural paint sold in the state.

3 (4) The architectural paint stewardship assessment shall be  
4 approved by the board as part of the plan, and shall be sufficient  
5 to recover, but not exceed, the cost of the architectural paint  
6 stewardship program.

7 (c) The plan shall address the coordination of the architectural  
8 paint stewardship program with local household hazardous waste  
9 programs, including contracting for the costs for architectural  
10 paint collected by the household hazardous waste programs, where  
11 practical.

12 (d) The plan shall include consumer, contractor, and retailer  
13 education and outreach efforts to promote the source reduction  
14 and recycling of architectural paint. This information may include,  
15 but is not limited to, developing, and updating as necessary,  
16 educational and other outreach materials aimed at retailers of  
17 architectural paint. These materials shall be made available to  
18 the retailers. These materials may include, but are not limited to,  
19 one or more of the following:

20 (1) Signage that is prominently displayed and easily visible to  
21 the consumer.

22 (2) Written materials and templates of materials for  
23 reproduction by retailers to be provided to the consumer at the  
24 time of purchase or delivery, or both. Written materials shall  
25 include information on the prohibition of improper disposal of  
26 architectural paint.

27 (3) Advertising or other promotional materials, or both, that  
28 include references to architectural paint recycling opportunities.

29 (e) On or before July 1, 2011, or two months after a plan is  
30 approved pursuant to Section 48704, the manufacturer or  
31 stewardship organization shall implement the architectural paint  
32 stewardship program described in the approved plan.

33 48704. (a) The board shall review and approve the  
34 architectural paint stewardship plan within 90 days of receipt. A  
35 plan not acted upon by the board within 90 days shall be deemed  
36 adopted.

37 (b) The board shall review the annual report required pursuant  
38 to Section 48705 and within 90 days of receipt shall adopt a finding  
39 of compliance or noncompliance with the provisions of this act.

40 (c) The board shall enforce this chapter.



1 (d) The stewardship organization shall pay the board  
2 administrative fees in the amount of \_\_\_\_ dollars (\$\_\_\_\_) when  
3 the plan is submitted for review and approval and thereafter an  
4 annual administrative fee of 0.05 percent of the architectural paint  
5 stewardship program costs as reported under Section 48705.

6 (e) (1) A civil penalty may be administratively imposed by the  
7 board on any person who violates this chapter in an amount of  
8 one thousand dollars (\$1,000) for each violation.

9 (2) Any person who intentionally, knowingly, or negligently  
10 violates this chapter may be assessed a civil penalty by the board  
11 of up to ten thousand dollars (\$10,000) for each violation.

12 (3) Any penalties collected by the board shall be used to offset  
13 the cost of the review and approval architectural paint stewardship  
14 plans and annual reports and of enforcement activities.

15 48705. By July 1, 2012, and each year thereafter, a  
16 manufacturer of architectural paint sold in this state shall,  
17 individually or through a representative stewardship organization,  
18 submit a report to the board describing its architectural paint  
19 recovery efforts. At a minimum, the report shall include all of the  
20 following:

21 (a) The total volume of architectural paint sold in this state  
22 during the preceding calendar year.

23 (b) The total volume of postconsumer architectural paint  
24 recovered in this state during the preceding calendar year.

25 (c) A description of methods used to collect, transport, and  
26 process postconsumer architectural paint in this state.

27 (d) The total cost of implementing the architectural paint  
28 stewardship program.

29 (e) An evaluation of how the architectural paint stewardship  
30 program's funding mechanism operated.

31 (f) Examples of educational materials that were provided to  
32 consumers the first year and any changes to those materials in  
33 subsequent years.

34 48706. Any action taken by a manufacturer or representative  
35 stewardship organization regarding the cost recovery system or  
36 the collecting, transporting, or processing of postconsumer  
37 architectural paint, pursuant to the requirements of this chapter  
38 and only to the extent necessary to plan and implement the cost  
39 recovery system, collection system, or recycling system, is not a  
40 violation of the Cartwright Act (Chapter 2 (commencing with

1 *Section 16700) of Part 2 of Division 7 of the Business and*  
2 *Professions Code), the Unfair Practices Act (Chapter 4*  
3 *(commencing with Section 17000) of Part 2 of Division 7 of the*  
4 *Business and Professions Code), or any other state law relating*  
5 *to antitrust, regulation of trade, or regulation of commerce.*

O